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# ALCOHOL Watercraft Operation Under the Influence of Alcohol, Drugs: Prohibited

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## ALCOHOL

### ***Watercraft Operation Under Influence of Alcohol, Drugs: Prohibited***

CODE SECTION:	O.C.G.A. § 52-7-12 (amended)
BILL NUMBER:	SB 316
ACT NUMBER:	1434
SUMMARY:	The Act prohibits the operation of boats and related activities by persons under the influence of drugs or alcohol. It specifies the level of alcohol to be considered “under the influence” and adopts the implied consent rules for chemical testing of suspected violators.
EFFECTIVE DATE:	April 1, 1986

#### *History*

In 1973, legislation prohibiting operation of a vessel or manipulation of water skis or any other similar device while under the influence of alcohol or drugs was enacted.<sup>1</sup> A violation of this provision was a misdemeanor.<sup>2</sup> However, enforcement of the law was handicapped by the failure to provide a means of determining whether a person was “under the influence.” This term was not defined in the statute, and no procedures for chemical testing for alcoholic content in the blood were provided. Law enforcement officials determined if the driver of a motorcraft was under the influence simply by observing the operation of the vessel.<sup>3</sup>

#### *SB 316*

The new O.C.G.A. § 52-7-12 stemmed from the increased consumption of alcoholic beverages on Georgia’s lakes and the public’s concern about drug and alcohol abuse. The Act facilitates efforts of enforcement officials to monitor conduct having a potential for serious harm. The Department of Natural Resources has reported that sixty percent of boating accidents each year are alcohol related.<sup>4</sup>

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1. 1973 Ga. Laws 1427, § 11.

2. 1973 Ga. Laws 1445, § 25.

3. Interview with Cpl. Ben H. Weatherly, Dep’t of Natural Resources, Game and Fish Div.—Law Enforcement, in Atlanta (Apr. 10, 1986).

4. *Id.*

The Act replaces O.C.G.A. § 52-7-12 in its entirety and conforms the laws governing operation of any vessel while under the influence of alcohol or drugs with corresponding motor vehicle laws ("DUI statutes").<sup>5</sup> The Act borrows the DUI statute's definition of "under the influence": an alcohol level of 0.12 percent in a person's blood establishes conclusively that he or she is in violation of this Act.<sup>6</sup> The amended O.C.G.A. § 52-7-12 also incorporates the implied consent rule found in Georgia's DUI statute.<sup>7</sup>

Implied consent in the context of waterway safety hazards is based upon recognition that a person operating a vessel while under the influence of alcohol or drugs is a direct threat to the welfare and safety of the general public.<sup>8</sup> Therefore, under the Act, any person reasonably believed to be operating a motorcraft while under the influence of alcohol will be deemed to have impliedly consented to a chemical test to determine the alcohol level of his or her blood, breath, or urine.<sup>9</sup>

As in O.C.G.A. § 40-5-55 (Motor Vehicles), O.C.G.A. § 52-7-12 authorizes the arresting officer to designate the chemical test to be administered, but the person arrested must be informed of his right to have an additional test conducted by a qualified person of his choice. Refusal to submit to testing negates the implied consent to testing. However, such refusal is admissible in evidence.

A person physically incapable of refusing testing due to death or unconsciousness "shall be deemed not to have withdrawn consent" and a test may be administered.<sup>10</sup> A blood test will be taken, at the direction of the investigating coroner or medical examiner, of any person who dies as a result of a boating accident.<sup>11</sup>

5. O.C.G.A. §§ 40-5-55, 40-6-391 (1982).

6. O.C.G.A. § 52-7-12(d)(4) (Supp. 1986). The Act presumes that a blood alcohol level of .05 percent or less indicates that a person is not under the influence. No presumption arises when the level is between .05 and .10, and a level of .10 to .12 percent creates a presumption that the person is under the influence. A level of .12 percent or more is conclusive proof that a person is under the influence. *See also* O.C.G.A. § 40-6-391(a)(4) (1982) (Motor Vehicles).

7. Compare O.C.G.A. § 40-5-55(a) (1982) with O.C.G.A. § 52-7-12(d)(4).

8. The legislature stated its rationale in the statute:

The State of Georgia considers that persons who are under the influence of alcohol or drugs while operating a vessel on the waters of this state constitute a direct and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a vessel upon the waters of this state shall be deemed to have given consent . . . to a chemical test or tests of his blood, breath, or urine or other bodily substances . . . .

O.C.G.A. § 52-7-12(e) (Supp. 1986).

9. *See* O.C.G.A. § 40-5-55 (1982); *see also* *Selected 1985 Georgia Legislation, Motor Vehicles: DUI Penalties: Conditional Licenses*, 1 GA. ST. U.L. REV. 265 (1985).

10. O.C.G.A. § 52-7-12(f) (Supp. 1986).

11. *Id.* § 52-7-12(h).

1986]

LEGISLATIVE REVIEW

141

The Act also makes it unlawful for any motorcraft owner to allow another to operate the vessel if the owner has reason to believe the person is under the influence of alcohol or drugs. A violation of O.C.G.A. § 52-7-12 remains a misdemeanor.<sup>12</sup>

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12. *Id.* § 52-7-12(j).